

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 20, 2008

STATE OF TENNESSEE v. SHANTAIN S. STAFFORD

Appeal from the Criminal Court for Sumner County
No. 690-2006 Dee David Gay, Judge

No. M2008-00383-CCA-R3-CD - Filed June 10, 2009

The Defendant, Shantain S. Stafford, was convicted of aggravated robbery following a jury trial. He was sentenced as a Range II, multiple offender to twenty years in the Department of Correction. In this direct appeal, the Defendant challenges the sufficiency of the evidence to support his conviction and contends that his sentence is excessive. After a review of the record, we conclude that the State presented evidence sufficient to support the Defendant's conviction and that the trial court did not err in sentencing him. Accordingly, the judgment of the Sumner County Criminal Court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right ; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, J., joined. NORMA MCGEE OGLE, J., concurred in results only.

John Chadwick Long, Old Hickory, Tennessee, for the appellant, Shantain S. Stafford.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Lawrence R. Whitley, District Attorney General; and C. Wayne Hyatt, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

In August 2006, a Sumner County grand jury indicted the Defendant for aggravated robbery, a Class B felony. See Tenn. Code Ann. § 39-13-402. The indictment stems from the armed robbery of a convenience store.

A jury trial was held on October 2, 2007. Viewed in the light most favorable to the State, the evidence established that the victim, Cecile Carmen, was working at Jr. Foods, a convenience store in Gallatin on April 30, 2006. At the time, she was sixty years old.

Around 9:45 p.m., the victim was mopping the store floor, when she heard the door open. She turned and saw a man pointing a silver-colored handgun at her. The individual was wearing a baseball cap pulled down over his face and a blue or black bandana tied around his face. The victim could see only the man's hands and eyes; she described him as African-American, about six feet tall with a medium build. The armed man demanded money, threatening "get it or I'll shoot your . . . ass." She wanted to just give him the money and "hopefully not be shot." She went behind the counter, opened the register, and gave the man approximately \$400. The man exited the store.

The victim telephoned 911. At this time, another man entered and asked the victim if she had been robbed and if she was okay. The victim stated that she did not see anyone else in the convenience store parking lot that night. She could not identify the robber because his face was covered.

The State then called Gallatin Police Investigator Chris Shockley. He testified that he was notified on April 30, 2006, that a robbery had taken place at Jr. Foods and that he was the lead investigator in the case.

Upon arrival, Officer Shockley viewed the store's surveillance tape and processed the scene for fingerprints. He stated that they removed identifiable fingerprints from the scene. The prints were compared with those in a police database, but no matches were found. Officer Shockley also testified that the quality of the surveillance tape was very poor due to its high rate of reuse and was not helpful in determining the robber's identity.

Upon speaking with people in the area and ruling out other individuals, the Defendant was developed as a suspect approximately two months after the robbery. Officer Shockley located the Defendant on June 14 and requested that he come to the police department for an interview. The Defendant agreed. The Defendant was advised of his Miranda rights, signed a waiver of rights form, and ultimately confessed to committing the robbery.

Officer Shockley stated that the Defendant gave two specific details during the interview that only the robber would know—that the victim was mopping the floor when he entered the store and that he was wearing a bandana over his face. The Defendant also informed Officer Shockley that he was wearing a blue hat that night, that he had stolen his uncle's .357 pistol to commit the robbery, and that he received approximately \$300 to \$345 in cash from the robbery. The gun was never recovered.

The interview lasted about two hours and forty-three minutes. According to Officer Shockley, the Defendant never requested a lawyer. A portion of the videotaped interview was played for the jury and was admitted into evidence, accompanied by a transcript of the tape.

Following the conclusion of proof, the jury found the Defendant guilty as charged. Subsequently, the trial court held a sentencing hearing. The Defendant was sentenced to serve

twenty years as a Range II, multiple offender in the Department of Correction. This timely appeal followed.

ANALYSIS

I. Sufficiency of the Evidence

The Defendant contends that the State failed to present evidence sufficient to convict him of aggravated robbery. Tennessee Code Annotated section 39-13-401(a) defines robbery as “the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” An aggravated robbery is one “[a]ccomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon” or one “where the victim suffers serious bodily injury.” Tenn. Code Ann. § 39-13-402(a).

Tennessee Rule of Appellate Procedure 13(e) prescribes that “[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.” A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant’s challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State’s witnesses and resolves all conflicts in the evidence in favor of the prosecution’s theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

It is well-established that a confession alone is not sufficient to support a conviction for any criminal offense. Ashby v. State, 139 S.W.872, 875 (Tenn. 1911); see also State v. Smith, 24 S.W.3d 274, 281 (Tenn. 2000). To sustain a verdict beyond a reasonable doubt, the State must corroborate the corpus delicti of the crime by proving “(1) that a certain result has been produced . . . and (2) some person is criminally responsible for the act.” Wooten v. State, 314 S.W.2d 1, 5 (Tenn. 1958). If a verdict is “founded on slight evidence of corroboration connecting the defendant

with the crime, it cannot be said, as a matter of law, that the verdict is contrary to the evidence.” Ricketts v. State, 241 S.W.2d 604, 606 (Tenn. 1951).

The Defendant asserts that he cannot be identified as the perpetrator of this offense. Specifically, the Defendant cites five deficiencies in the State’s identification proof: (1) the victim’s inability to positively identify him; (2) the video surveillance tape was not introduced into evidence due to its poor quality; (3) there was no other eyewitness identification; (4) the Defendant’s fingerprints were not found at the scene; and (5) the gun was never recovered. The State asserts that the Defendant’s confession, along with testimony by the victim and Officer Shockley, is sufficient for a rational jury to find the Defendant guilty beyond a reasonable doubt. We agree with the State.

In this case, the State presented the Defendant’s confession and testimony from the victim and the investigating officer. The only issue is whether the State provided corroborating evidence of the corpus delicti of the crime. A rational jury could certainly find beyond a reasonable doubt that the alleged criminal act was in fact committed in this case. The testimony of the victim was that she was mopping the floor when the robber, armed with a silver-colored handgun, entered the store. According to the victim, the African-American robber wore a baseball hat and a bandana over his face, so she could not identify him. The man demanded money, threatening to shoot the victim. The victim testified that she gave him about \$400 in cash, and the robber left the store. In the confession taken by Officer Shockley, the Defendant stated that he wore a baseball hat and bandana when he committed the robbery. The Defendant stated that, when he entered the store, the victim was mopping the floor and that he received about \$300 to \$345 as proceeds of the robbery. The facts provided by the victim at trial are similar to those provided by the Defendant in his videotaped confession. Therefore, the State met its burden of corroborating the corpus delicti of the crime. As such, we conclude that a rational jury could find the Defendant guilty beyond a reasonable doubt and, therefore, the evidence is sufficient to support the Defendant’s conviction for aggravated robbery.

II. Sentencing

The Defendant was convicted of aggravated robbery, which is a Class B felony. See Tenn. Code Ann. § 39-13-402(b). As a Range II, multiple offender the Defendant’s sentencing range was twelve to twenty years. See Tenn. Code Ann. § 40-35-112(b)(2). The trial court imposed the maximum sentence of twenty years. The Defendant argues that his sentence is excessive.

On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. See Tenn. Code Ann. § 40-35-401, Sentencing Comm’n Comments; see also State v. Arnett, 49 S.W.3d 250, 257 (Tenn. 2001). When a defendant challenges the length, range, or manner of service of a sentence, it is the duty of this Court to conduct a de novo review on the record with a presumption that the determinations made by the court from which the appeal is taken are correct. Tenn. Code Ann. § 40-35-401(d). However, this presumption “is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Pettus, 986 S.W.2d 540, 543-44 (Tenn. 1999); see also State v. Carter, 254 S.W.3d 335, 344-45 (Tenn. 2008). If our review reflects that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then

review of the challenged sentence is purely de novo without the presumption of correctness. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991); see also Carter, 254 S.W.3d at 344-45.

In conducting a de novo review of a sentence, this Court must consider (a) the evidence adduced at the trial and the sentencing hearing; (b) the presentence report; (c) the principles of sentencing and arguments as to sentencing alternatives; (d) the nature and characteristics of the criminal conduct involved; (e) evidence and information offered by the parties on the enhancement and mitigating factors set forth in Tennessee Code Annotated sections 40-35-113 and 40-35-114; (f) any statistical information provided by the Administrative Office of the Courts as to Tennessee sentencing practices for similar offenses; and (g) any statement the defendant wishes to make in the defendant's own behalf about sentencing. Tenn. Code Ann. § 40-35-210(b); see also Carter, 254 S.W.3d at 343; State v. Imfeld, 70 S.W.3d 698, 704 (Tenn. 2002).

The Defendant's conduct occurred subsequent to the enactment of the 2005 amendments to the Sentencing Act, which became effective June 7, 2005. The amended statute no longer imposes a presumptive sentence. Carter, 254 S.W.3d at 343. As further explained by our supreme court in Carter,

the trial court is free to select any sentence within the applicable range so long as the length of the sentence is "consistent with the purposes and principles of [the Sentencing Act]." [Tenn. Code Ann.] § 40-35-210(d). Those purposes and principles include "the imposition of a sentence justly deserved in relation to the seriousness of the offense," [Tenn. Code Ann.] § 40-35-102(1), a punishment sufficient "to prevent crime and promote respect for the law," [Tenn. Code Ann.] § 40-35-102(3), and consideration of a defendant's "potential or lack of potential for . . . rehabilitation," [Tenn. Code Ann.] § 40-35-103(5).

Id. (footnote omitted).

The 2005 Amendment to the Sentencing Act deleted appellate review of the weighing of the enhancement and mitigating factors, as it rendered these factors merely advisory, as opposed to binding, upon the trial court's sentencing decision. Id. Under current sentencing law, the trial court is nonetheless required to "consider" an advisory sentencing guideline that is relevant to the sentencing determination, including the application of enhancing and mitigating factors. Id. at 344. The trial court's weighing of various mitigating and enhancing factors is now left to the trial court's sound discretion. Id. Thus, the 2005 revision to Tennessee Code Annotated section 40-35-210 increases the amount of discretion a trial court exercises when imposing a sentencing term. Id. at 344.

To facilitate appellate review, the trial court is required to place on the record its reasons for imposing the specific sentence, including the identification of the mitigating and enhancement factors found, the specific facts supporting each enhancement factor found, and the method by which the mitigating and enhancement factors have been evaluated and balanced in determining the

sentence. See id. at 343; State v. Samuels, 44 S.W.3d 489, 492 (Tenn. 2001). If our review reflects that the trial court applied inappropriate mitigating and/or enhancement factors or otherwise failed to follow the Sentencing Act, the presumption of correctness fails and our review is de novo. Carter, 254 S.W.3d at 345.

The Defendant's argument centers around testimony at the sentencing hearing from court mental health liaison, Tim Sircy, about statements made by the Defendant during a mental health evaluation. The trial judge gave an account of the events leading up to the evaluation. It was brought to the attention of the trial judge during pretrial matters that the Defendant was causing some difficulties in jail, and the trial judge became concerned about the mental health of the Defendant. In June 2007, a competency exam was conducted at the request of the defense, and the Defendant was deemed competent to stand trial and assist in his defense.

Sometime prior to trial, the State sought to have the Defendant transferred to the state penitentiary for safekeeping purposes. While preparing for trial, defense counsel continued to be concerned about the Defendant's mental health, questioning whether the Defendant understood the terms of the plea offer. Additionally, the Defendant expressed reservation about wearing "regular clothes" at trial, finally being persuaded by defense counsel not to wear "jail clothes" in front of the jury. "[W]ithin the last week that this case was set for trial," the defense requested to "possibly" continue the case for further mental evaluation of the Defendant.

Because of these issues, following the Defendant's conviction, the trial judge requested the mental health liaison do an evaluation of the Defendant "as part of the presentence evaluation" Further elaborating as to why a mental health evaluation was necessary, the trial judge noted, "I was just trying to get some input on a possible issue that I felt would be needed to be addressed in sentencing for this particular defendant," and also to assist "in knowing where this defendant is coming from."

During the evaluation, the Defendant made some very damaging statements. The Defendant was asked why he refused to participate in his defense, and the Defendant stated, "I was told by my lawyer that I was guilty and was going to jail. What is the point of trying to defend yourself against something that you really did do? . . . I robbed someone with a .357 magnum. I did it and that's it." When asked if he was provided the opportunity to turn his life around would he take the opportunity to make changes in his life, get a job, and function as a member of society, he replied, "No. . . . I have never worked, except for only one week and I quit. Working is too hard, and I am not going to do it. I am not working! All I know is how to rob and steal and that is what I am going to do." He was asked what he will do when he gets out jail following this incarceration, and he said, "[R]ob and steal again. I will do this again."

The Defendant argues that these statements were self-incriminating and made without the presence of counsel in violation of his constitutional rights. Thus, he asserts that the trial court erred in considering Sircy's testimony in its sentencing determination, rendering his maximum sentence excessive.

In addition to considering the statements made to Sircy during the mental health evaluation, the trial court found that two enhancement factors applied—that the Defendant had a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range, and that the Defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult. See Tenn. Code Ann. § 40-35-114(1), (16). According to the presentence report, the Defendant’s adult record consisted of three felony convictions—two convictions for aggravated robbery and one for aggravated assault—and he received an effective sentence of ten years in the Department of Correction for these offenses. Only two of these convictions were required to establish the Defendant as a Range II, multiple offender. See Tenn. Code Ann. 40-35-106(a)(1). As a juvenile, the Defendant was convicted of aggravated burglary and spent time in the department of youth development. The trial court also noted the Defendant’s history of drug abuse and admission that he was selling crack cocaine. The twenty-eight-year-old Defendant had spent most of his adult life incarcerated and had no significant employment history.

As for further criminal behavior or conduct by this Defendant, the trial court also considered testimony from Renee Workings of the Sumner County Sheriff’s Office. She testified that the Defendant had six “write-ups” and two “lockdowns” while he was in jail pending trial, including when the Defendant and two other inmates got into a fight over a card game and when the Defendant made a comment to a correction officer threatening “to blow his head off.”

Finally, the trial court considered the general sentencing principles set forth in section 40-35-103—confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct; confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant. See Tenn. Code Ann. § 40-35-103(1). Based upon the statements made by the Defendant to Sircy, the trial court concluded that “[t]here is no rehabilitation here”

No mitigating factors were found applicable to the Defendant. The trial court then imposed the maximum sentence “[b]ased on all these considerations.”

No objection was made to the Defendant’s submitting to the mental health evaluation prior to sentencing on the ground that the evaluation violated his right against self-incrimination or right to counsel. In fact, the evaluation was conducted due to recurring concerns of defense counsel. The trial judge noted it was not its “normal” practice to order such evaluations. In imposing the maximum sentence, the trial judge considered the sentencing principles and all relevant facts and circumstances. The Defendant’s statements to Sircy were used in the trial judge’s overall calculus for determining the Defendant’s sentence. Moreover, even if the trial judge did err in considering these statements, the Defendant’s criminal history and criminal behavior are sufficient to support the sentence. We conclude that the trial court did not err or abuse its discretion in setting the Defendant’s sentence at the maximum of twenty years.

CONCLUSION

Based on the foregoing reasoning and authorities, we conclude that the evidence is sufficient to support the aggravated robbery conviction and that the sentence as imposed is not excessive. The judgment of the Sumner County Criminal Court is affirmed.

DAVID H. WELLES, JUDGE